

12976

No. _____

Supreme Court of Illinois

Cowen

vs.

Green

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 213.

1860

Cover

vs

Free

~~Return~~

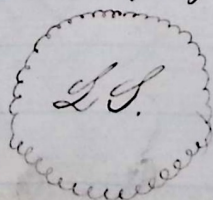
12976

Pleas before the Circuit Court of Marshall County in
the State of Illinois at a Term thereof began and held
at the Court House in the City of Lacon in said Coun-
ty on Monday the Second day of May in the year of
Our Lord, One thousand eight hundred and fifty nine.
Present Hon. Mark Bangs Judge of the 23^d Judicial
Circuit of the State of Illinois Presiding, Henry
Miller, State attorney for said judicial Circuit,
Thomas Ellis Sheriff of said Marshall County and
James Wescott Clerk of said Circuit Court.

The People of the State of Illinois,

Summons

To the Sheriff of Marshall County - Greeting;
We command you to summon Walter Cowen if he may
be found in your County to appear before our Circu-
it Court, on the first day of the next term thereof,
to be held at Lacon, within and for the said County
of Marshall, on the first Monday of May A.D. 1859
then and there, in our said Court, to answer unto
David Green survivor of Henry W. Bucknau and
David Green in a plea of Trespass on the case on
promises in damages at the sum of Four Hundred
dollars as he says. Hereof fail not, and make due
return of your doings hereon. Witness James Wescott,
Clerk of our said court, and the seal
thereof, at Lacon, this twenty first
day of April in the year of our



Lord one thousand eight hundred and fifty nine.
James Wescott Clerk "

Sheriff's
Return

I have served this writ by reading the same to the
within named Walter Cowen on this, the 21st day
of April A.D. 1859, as within commanded.

Sheriff's Fee Thomas Ellis Sheriff of Marshall Co. Mo.

Service \$. 50 by W. N. Carlson

8 miles travel, 40 Deft Sheriff

Return of this writ, 10
\$ 1.00

Endorsed "Filed April 30, 1859 James Wescott Clerk"

State of Illinois }
Declaration Marshall County }^{ss.} In the said Marshall County
Circuit Court, of the May Term
1859.

David Green survivor of Henry W. Bucknum and
David Green the Plaintiff in this suit by J. S. Berley
complains of Walter Cowen, the defendant in this
suit who has been summoned to answer the said
Plaintiff in a plea of trespass in the case on prom-
ises: For that whereas the said defendant in the
life time of one Henry W. Bucknum, since decess-
ed, to wit, on the first day of January in the year
of our Lord One Thousand Eight Hundred and
fifty nine, at the county aforesaid was indebted

to the said Plaintiff and the said Henry W. Buckn.
sum in the sum of three hundred dollars of lawful
money, of the United States of America for divers
goods, wares and merchandise by the said Plaintiff
and Henry W. Bucknum before that time sold and
delivered to the said defendant and at the special
instance and request of the said defendant and being
so indebted to the said plaintiff and the said Hen-
ry W. Bucknum, the said defendant in consideration
thereof, afterwards to wit, on the same day and year
and at the place aforesaid, and in the life time of the
said Henry W. Bucknum, undertook and then and
there faithfully promised the said Plaintiff and the
said Henry W. Bucknum well and truly to pay unto
the said Plaintiff and the said Henry W. Bucknum
the said sum of money last mentioned when the
said defendant should be thereunto afterwards requir-
ed: And Whereas, also in the lifetime of one Hen-
ry W. Bucknum since deceased the said defendant
heretofore to wit: on the fifteenth (15) day of January
in the year of our Lord one thousand eight hundred
and fifty nine at the County aforesaid was indebted to
the said Plaintiff and the said Henry W. Bucknum
in the sum of Three Hundred and five dollars and
thirty eight cents of lawful money of the United Sta-
tes of America, for divers goods, wares and mer-
chandise, by the said plaintiff and the said Bucknum
before that time sold and delivered to the said defend.

2
and merchandise last mentioned, at the time
of the sale and delivery thereof in the life time of
the said Bucknum were reasonably worth the
further sum of four hundred dollars of like law-
ful money aforesaid, to wit, at the place aforesaid,
id, whereof the said defendant afterwards, to wit,
on the same day and year in the life time of the
said Bucknum and at the place aforesaid, had
notice. And whereas also, the said defendant af-
terwards, to wit, on the same day and year, and
at the place aforesaid in the life time of said
Bucknum was indebted to the said plaintiff and
said Bucknum in the further sum of four hundred
dollars of like lawful money as aforesaid, for
money before that time lent and advanced by the
said plaintiff and said Bucknum in his life time
to the said defendant and at the like request of
said defendant. And for other money by the
said plaintiff and said Bucknum in his life
time before that time paid, laid out and expen-
ded for the said defendant, and at the like re-
quest of said defendant. And for other money
by the said defendant before that time had and
received to and for the use of the said plaintiff
and said Bucknum in the life time of said Buck-
num. And also in the further sum of four hun-
dred Dollars for so much money before that time,
and then due and payable from the said defend-

, ant to the said plaintiff and said Bucknum
for interest upon and for the forbearance of di-
verse large sums of money before then due and
owing from the said defendant to the said plain-
tiff and said Bucknum, and by the said pla-
intiff and said Bucknum forbore to the said
defendant, for divers long spaces of time, before
then elapsed, at the like special instance and
request of the said defendant. And being so indi-
cated, the said defendant in consideration thereof,
afterwards, to wit on the same day and year, and
at the place aforesaid, undertook, and then and
there faithfully promised the said plaintiff and
said Bucknum well and truly to pay unto the said
plaintiff and said Bucknum the said several
sums of money in this count mentioned, when the
said defendant should be thereunto afterwards requi-
red. And Whereas, Also, the said defendant after-
wards, to wit, on the same day and year, and at
the place aforesaid, accounted together with the sa-
id plaintiff and said Bucknum, of and concern-
ing diverse other sums of money, before that time
due and owing from the said defendant to the said
plaintiff and said Bucknum and then and there
being in arrear and unpaid, and upon such accou-
nting, the said defendant then and there was found
to be in arrear and indebted to the said plaintiff
and said Bucknum in the further sum of four

hundred dollars of like lawful money, as aforesaid. And being so found in arrear and indebted to the said plaintiff and said Bucknum the said defendant in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid undertook, and then and there faithfully promised the said plaintiff and the said Bucknum, well and truly to pay unto the said plaintiff and the said Bucknum the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested. Nevertheless, the said defendant not regarding his said promises and undertakings but contriving and intending to defraud and deceive the said Plaintiff and the said Bucknum in the life time of said Bucknum, and the said Plaintiff since the death of the said Bucknum in this behalf (although often requested, etc.) has not yet paid the several sums of money above mentioned or any or either of them, or any part thereof, to the said plaintiff and the said Bucknum or either of them, but he to do this hath hitherto altogether refused, and still doth refuse to pay the same to the said Plaintiff, to the damage of the said plaintiff of four hundred dollars, and therefore the said plaintiff brings suit, etc.

J. S. Perley

Atty for Plff. — "

"Copy of Account sued on is attached marked Exhibit
"it A and given below, to wit: "

Walter Cowen to David Green survivor of Henry W. Bucknum and David Green	Dr
To goods wares and merchandise	\$ 300.00
" " " " "	\$ 305.38
" " " " "	\$ 400.00
" money lent and advanced	\$ 400.00
" " paid, laid out and Expended	\$ 400.00
" " paid and received	\$ 400.00
" " interest	\$ 400.00
" Balance due on account stated	\$ 400.00

Exhibit "A" Copy of Account sued on

Henry March 9th 1859

Walter Cowen
to David Green survivor of Henry
W. Bucknum and David Green Dr

Sept	18	72	Pickets	1 1/4	95
"	"	652	feet Common	"	7 17
"	"	48	Lights Sash	5	2 40
"	"	2	Doors	@ 2	4 00
"	20	1200	feet Common	" 11	13.20
"	21	1663	" Do	" 11	18.29

"	"	38	"	Do	"	"	42
"	"	920	"	Sp ^d Siding	"	18	16 56
"	"	470	"	" Flooring	"	22	10 32
"	"	4 1/2	At	Shingles	3.75		16 88
Oct	4	500	feet	Culls	pr Bunhan	9	4 50
"	25	1122	"	Common	pr Black.		13 46
"	29	24	"	2 nd Clear		.25	60
"	"	78	"	Lumber		16	1 29
"	30	1056	"	Siding Sp ^d		18	19 01
"	"	784	"	Sp ^d Flooring		22	17 25
"	"	312	"	Timber		12	3 74
Nov.	1	500	"	Culls	pr Black	10	5 00
"	"	290	"	2 nd Clear	"	25	7 25
"	"	20	"	Lumber	"	14	28
"	"	48		Light Sash	"	5	2 40
"	"	4		Doors	"	2	8 00
"	16	1098	feet	Common		12	13 18
"	"	2 1/2	At	Shingles		4	10 00
"	17	24		Light Sash		6	1 44
"	"	2		Doors		2	4 00
"	18	432	feet	Flooring		22	6 60
"	"	540		Sp ^d Siding		18	9 72
"	25	700	"	Common		12	8 40
"	"	5	At	Shingles		4	20 00
Dec	2	1800		Laths			4 05
"	11	300	feet	Common			4 20
		480	"	Siding			9 60
				amb Car forward			264 18

		To Amt Brat. Forward		264	18
Dec	"	2 1/4 At Shingles	4	9	00
"	"	300 2 nd Flooring	25	7	50
"	"	270 feet 2/4 = 14 feet			
"	"	36 " 2/4 = 18 "			
"	"	16 " 4/4 = 12 "			
"	"	206 " 2/6 = 16 "			
"	"	126 " 2/6 = 14 "			
"	"	108 " 4/6 = 18 "			
"	"	84 " 4/6 = 14 " 896f @ 14		12	55
"	"	36 Lights 9/12 Sash	6	2	16
"	"	169 feet 2 nd Clear.	30.	5	07
"	16	21 " Siding (pr Falford)	18		37
"	"	19 " Comm Rds	" 14		35
1859	"	19 " Comm Rds	" 14		
July	6	300 " Comm Rds	14	4	20
				<u>305.38</u>	

EXCE "

Endorsed "Filed April 22. 1859

James Wescott Clerk"

David Green Survivor of Henry
Rule to Plead W. Bucknum & David Green

vs.

Walter Cawen

Assumpsit

This day came the

Plaintiff by Perley his attorney and on his motion the
defendant is ruled to plead herein by Thursday morn-
"ing next."

Pleas

David Green surviving partner
of Bucknum & Green

vs

Walter Cowen

Marshall County Cir.

"Circuit Court May Term

1859

And the said defendant
by Richmond & Burns his attorneys comes & defends
the wrong & injury & injury which he says he did
not undertake & promise in manner & form as the
said plaintiff hath above thereof complained aga-
"inst him & of this he puts himself upon the country
And the Plaintiff doth the like Richmond & Burns

J. S. Perley

Atty for Plff.

Defts Atty

And for a further plea in this behalf the defendant
says actis now because he says that after the mak-
"ing of the several promises & undertakings in the
plaintiffs declaration mentioned & before the comm-
"encement of this suit to wit on the first day of
March A. D. 1859 at the county of Marshall & State
of Illinois he fully paid & satisfied the said sever-
"al sums of money in the plaintiffs declaration men-

tioned & of this he puts himself upon the country,
Richmond & Burns
Defts attys

And for a further plea in this behalf by leave of the
court first had & obtained for that purpose the said
defendant says actis now because he says that the
said plaintiff before & at the time of the commence-
ment of this suit to wit at the county aforesaid
was and still is indebted to the said defendant in
a large sum of money to wit the sum of four hun-
dred dollars for the work & labour, care diligence
& attendance of the said defendant by the said defen-
dant & his servants & agents before that time done
performed & bestowed in & about the business of the
said plaintiff & the said Henry W. Bucknum & in
the life time of the said Henry W. Bucknum & at
their request and for divers materials & other neces-
sary things by the said defendant before that time
found & provided & used & applied in & about
the said work & labor for the said plaintiff & the
said Henry W. Bucknum in the life time of the
said Henry W. Bucknum & at their request and
for divers goods wears merchandize & grain
sold & delivered by the said defendant to the said
plaintiff & the said Henry W. Bucknum in the life
time of the said Henry W. Bucknum & at their
like request & for money by the said defendant be-

4
fore that time lent & advanced to & paid laid out
& expended for the said plaintiff & the said Henry
W. Bucknam & in the life time of the said Henry
W. Bucknam at their request, and for money before
that time by the said plaintiff and the said Henry
W. Bucknam & in the life time of the said Henry W.
Bucknam had & received to & for the use of the
said Defendants and for money found to be due
from the said plaintiff & the said said Henry W.
Bucknam in the life time of the said Henry W. Bu.
cknam on an account stated between them which
said sum of money due & owing to the said de.
fendants as aforesaid exceed the damages sustained
by the said plaintiff by reason of the non perform.
ance by the said defendant of the said several
promises & undertakings in the said declaration
mentioned & out of which said sum of money is
due & owing from the said plaintiff & said
Henry W. Bucknam the said defendant is ready
& willing & hereby offers to set off & allow to the said
plaintiff the full amount of the said damages acc.
ording to the form of the statute in such case ma.
de & provided & this the said defendant is ready
to verify wherefore he prays judgment &c

Richmond & Burns

Defts Attys

David Green survivor of Bucknans and Green
To Walter Cowen Dr

To Boating Lumber	\$ 300. 00
" Hauling Lumber	\$ 200. 00
" Grains sold & delivered	\$ 250. 00

Tuesday May 10th A. D. 1859

Order for continuance	David Green survivor of	}	Assumpsit
	Henry W. Bucknans & David Green		
	vs. Walter Cowen		

This day came the parties by their attorneys and by agreement this cause is continued.

Pleas before the Circuit Court of Marshall County in the State of Illinois at a Term thereof began and held at the Court House in the City of Lacon in said County on Monday the third day of October in the year of our Lord one thousand eight hundred and fifty nine. Present the Hon Mark Bangs judge of the 23^d judicial circuit of the State of Illinois presiding. Henry Miller states attorney for said Judicial Circuit. Thomas Ellis Sheriff of said

County of Marshall & James Wescott Clerk of said
Circuit Court.

Monday October 3^d A. D. 1859

David Green Survivor of
Henry W. Bucknum & David Green

vs.

Walter Cowen

} Assumpsit

This day came the
Defendant by Richmond & Burns his attorneys and
on their motion leave is granted them to file addit.
ional pleas herein.

Replication
David Green surviving Partner
of Bucknum & Green

vs.

Walter Cowen

} Circuit Court of Marsh.

all County, Illinois.

October Term A. D. 1859

And the said Plaintiff as to the said plea of the said
defendant by him secondly above pleaded saith that
the said Plaintiff by reason of anything by the said de.
fendant in that plea alleged ought not to be barred
from having and maintaining his aforesaid action
thereof against him the said Defendant because he
saith that the said defendant did not pay and satisfy

the said several sums of money in the Plaintiff's declaration mentioned in manner and form as the said defendant hath above in his said plea in that behalf alleged. And this the said Plaintiff prays may be inquired of by the Country &c.

J. S. Perley
Atty for Plaintiff

And the said Plaintiff as to the said Plea of the said defendant by him thirdly above - pleaded saith precludi now because he saith that he, the said Plaintiff and the said Henry W. Bucknum were not nor are nor is he nor was he indebted indebted to the said defendant in manner and form as the said defendant hath above in his said last plea in that behalf alleged. And this said Plaintiff prays may be inquired of by the County &c.

J. S. Perley
Atty for Plff.

Endorsed "Filed October 6. 1859

James Wescott Clerk"

Monday October 10th A. D. 1859

David Green survivor of

Henry W. Bucknum & David Green

vs.

Walter Cowen

Assumpsit

This day came the Plain.

5
tiff by P. S. Perley & Henry Miller his attorneys and
the Defendant came by Richmond & Burns his attorn-
"eys and issues being joined herein, it was ordered by
the court that a jury be called to try said issues, and
thereupon a jury being called, came to wit: John C.
Townsend, F. H. Bond, James Shanklin, Horace Spen-
"cer, C. D. Blake, Levi Vincent, Benjamin L. Lombard
James Sharp, Hiram Meyers, James McKoff, Henry
Snell, Abram Delong twelve good and lawful men
who were duly empannelled and sworn well and truly
to try the issues in this cause and a true verdict re-
"ver according to the evidence, and after hearing the evi-
"dence the arguments of counsel and the instructions of
the court retire to consider of their verdict and upon
coming into Court say "we the jury find the issues join-
"ed for the Plaintiff and assess his damages at the
sum of One hundred and fifty one dollars and thir-
"ty eight cents, whereupon comes the Defendant by
his counsel and entered a motion to set aside the
verdict, and to grant a new trial herein.

Saturday October 22^d A. D. 1857

David Green survivor of
Henry W. Backnum & David Green } Assumpsit
vs.
Walter Cowen }

On this day this cause

come on to be heard upon the motion of the Defend.
and for a new trial herein and was argued by Coun-
sel and the Court being now fully advised in the
premises doth order that said motion be overruled
It is therefore considered by the Court that the said Plain-
tiff have and recover of the said Walter Cawen the said
sum of One hundred and fifty one dollars and thirty eig-
ht cents his damages assessed by the jury as aforesaid
also his costs herein expended and that he have execu-
tion therefor - Whereupon comes the Defendant
by his counsel and prays an appeal to the Supreme
Court of this State, which appeal is allowed upon
the Defendants filing a bond conditioned according
to law in the sum of five hundred dollars with
Thomas Cawen as security within sixty days and
by agreement the bill of exceptions in this cause
may be signed at any time within sixty days.

Bill of Exceptions	David Green surviving partner	} Marshall County	
	of the firm of Bucknum & Green		} Circuit Court of the
	vs. Walter Cawen		

Be it remembered that
in the trial of this cause the plaintiff to maintain
the issues on his part called as a witness James
Horton who after being duly sworn testified as

follows, that he was in the employ of the firm of Bucknum and Green in the winter of 1858 & 9, that he began for them in September 1858, that said firm was in the lumber and grain business that the first lumber he sold for them that he recollects of was Dec 6th 1858 that he had delivered lumber to the debt for said firm that on the 11th Dec 1858, he delivered 300 feet of common boards 480 ft of siding 2200 shingles and 300 ft of flooring, that on the 13th day of the same month he delivered 704 ft of Studing and joice 192 ft of timber; 36 lights of Sack & 169 ft of 2^d Clear lumber, that on the 16th day of said month he delivered 21 ft of Siding 19 ft Common boards and on Jan 6th 1859 he delivered 300 of common boards.

On Cross Examination the witness testified that Bucknum & Green went into partnership Sept. 14, 1858 that Mr Fulford got part of the lumber, or he had been testifying about, how much he did not recollect but that all he got was delivered to him on debt account and that Debt authorized the delivery to him, that it was witness understanding that debt was getting the lumber to pay the indebtedness of the firm to him and also the indebtedness of said Bucknum to him.

Witness further testified on Cross Examination that Bucknum & Green stored grain for

Deft. that Deft had grain in the warehouse of Bucknum & Green at the time their partnership was formed that Bucknum shipped some of Deft's grain, that last fall Bucknum & Green shipped four or five hundred bushels of corn belonging to Deft on acct of said Bucknum, that on one occasion Bucknum directed witness not to deliver any more lumber on Deft's acct but afterwards told him to let lumber go on Deft's order as he was owing him more than he expected.

On re-examination by plff. Witness stated that common lumber was worth \$14 per thousand, Sid. ing \$20. per thousand, Shingles \$4 to \$5. per thousands flooring \$25. per thousand for same as common, Oak from 4 to 7 cts per light 2^d Sear lumber from \$20 to \$25 and some that was very nice was worth \$30.

Plff then called S. J. McFadden who testified that he was in the employ of Bucknum & Green in fall of 1858. that while in their employ he delivered to Deft lumber at their yard as follows.

Sept 28. 600 ft common lumber 48 lights each 8 x 10. 2 doors. 72 pickets.

Oct 20. 1200 ft common lumber, that common was worth \$11. per thousand, doors worth \$2 a piece

Oct 21st 846 ft. 243 ft. 246 ft. & 198 ft. all com.
 " mon. 467 ft flooring 920 ft Siding, 4000
 Shingles at \$3.75 per thousand
 Oct 4th 500 feet Culls at \$9.
 Oct 25. 1122 ft Culls at \$11.
 Oct 29 1056 feet 784 ft & 312 ft timber
 Nov 1st 500 ft Culls at \$10. 290 ft 2^d Clear at
 \$25. 48 light Sacks at 5 cts
 Nov 16th 1098 ft common at \$11. 2500 Shingles at
 \$4. and 2 Doors
 Nov 20. 432 feet flooring at \$22. 540 ft Siding
 Nov 25 700. Common \$13. 5000 Shingles at 4. \$

On Oaf Examination witness testified that he knew
 of 2 boat loads of lumber were shipped to Buck.
 " run on deft boat that the freight on one amount
 " ed to \$30. that the freight on the other load amo.
 " ounted to about the same sum, that deft hauled
 all or nearly all of both loads from the river land.
 " ing to the lumber yard of Bucknum & Green that one
 boat load amounted to about 48000 feet, that deft
 was to have 25 cts per thousand for hauling, that
 all the lumber witness delivered was delivered to
 Camen and a man by the name of Black and
 one Albertson is not certain about delivering
 any to Albertson, that Deft hauled all or nearly
 all the lumber of Bucknum & Green left at the land
 " ding, from that place to the yard or of Bucknum

& Green, that hauling of one load he believes came to \$25. or \$30. that Cowans teams hauled away all the lumber delivered to him, that part of the lumber was hauled across the river to his farms near the Central Rail Road. That he acted as the clerk and sold the lumber of the plaintiffs from the time they formed their partnership till the last of November.

Plff then called A. H. Powell and handed him for examination certain account books, whereupon witness testified that the books were the books of Bucknam & Green, that a part of the entries therein were in the handwriting of plff that he had settled with Bucknam & Green his (witness') account in said books, by said books and found said account fair and correct.

The plaintiff then offered in Evidence the said books, to prove the account sued on to the reading of which books the deft then & there objected for the reason that the proper foundation had not been laid or the proper case made by plff. to read the said books to the jury but the Court overruled the objection of Deft and the books to be read to the jury to which decision the deft then & there excepted.

Said A. H. Powell further testified that said Books had been left with him to settle Plff's

accounts therein with various persons about the County therein charged and that he as agent of Plff had settled various other accounts as well as his own and that the persons he settled with found no fault with the charges therein contained but settled them as therein stated.

Here plaintiff rested his case.

The defendant then called William York who after being sworn testified that he was acquainted with all the parties that he had been master of the Canal boat "Challenge" and that Bucknum was the agent of said Boat that he had delivered from his boat at Henry Ills for Bucknum five loads of lumber, that the freight would average about \$200. per load that all the freight had been settled but about \$300. that the boat was owned by Bucknum, Cowen and witness, The defendant then offered to prove by said witness that a part of the freight would be coming to debt that the lumber really belonged to Bucknum & Green, that Bucknum and York (the witness) and debt had all agreed upon a division of the account for the freight and that Bucknum and Green and Green had agreed to pay to Debt. his part of the freight, and also what his part of the freight would amount to - the Plff obje.

ted to the testimony so offered on the ground
that witness was interested the Court sustained the
objection and refused to allow said York to testify
to said facts whereupon the deft then & there ex-
cepted to said ruling and decision of the Court in
rejecting such testimony.

Said York testified that he
(York) and Defendant and Bucknum had met
together and divided among them the freight acco-
unts due said Boat from various persons, one
taking one account and another another account

Deft then called Edward Ward who testified that
he worked for deft in the fall and winter of 1858 & 9
that he drove defts team and as the employee
of deft hauled he thinks five boat loads from
the river landing at Henry to the yard of Buck-
num & Green and for them five Canal boat loads
of lumber that in his opinion there was from
sixty to seventy thousand feet to each boat load
that it was hauled at 25 cents per thousand, that
he hauled 10 Wagon loads from the river to Buck-
num's house at the request of Green & deft, which
was worth 25 cts per load, that he also hauled
two or three boat loads for Bucknum & McFadden
when they were in partnership, that he also hauled
from the rail road cars to said lumber yard
& Wagon loads of lumber worth 25 cts per load

7
Deft then recalled the witness York who testified that he delivered at the landing at Henry three boat loads of lumber from his own boat for Bucknum & Green that one load contained 91,156 feet that one contained 72,365 feet and the other contained 73,340 feet, that other parties delivered at said landing three other Canal boat loads and one Scow load, that one of the loads was about the same size as that of witness's loads that two of them amounted in witness opinion to 100,000 feet each that the Scow carried probably 30,000 or 40,000 feet, and that the teams of defendant hauled nearly all the lumber delivered at the landing for Bucknum & Green, all he believed but some culls

One whole boat load was culls none of which Deft hauled, except 2 or 3 loads - wagon loads

The deft then called the said James Norton, who testified that deft hauled nearly all the lumber shipped to Bucknum & Green when they were in partnership and delivered at the Henry landing that he hauled all of said lumber but about about one hundred and twenty thousand feet. That said Fulford got on defts account about fifty thousand feet, on Camens account, and that it was delivered in part payment of Bucknums individ. and account in favor of Camens with the knowledge,

age and consent of Cawen and both Bucknum
Green That he sold about 1000 feet of culls
worth \$9, and which had been sold to Deft.
Cawen, to other persons by mistake

That he thought that six Canal boat loads - be-
ides the scow load of lumber were delivered at
Henry for Bucknum and Green

Deft then called Eli Albertson who testified, that
he had a contract with Cawen, to build him a
house that he (Witness) was to furnish all the
lumber, that Deft proposed afterwards to furnish
him some lumber at Bucknum's & Green's lumber
yard, ^{and that he got at said yard} on Deft's verbal order Eighty Dollars worth
of lumber that afterwards he got fifty Dollars
more in lumber at said yard on Cawen's account
that at one time ^{when} Deft. Bucknum Green and
Witness were together, it was stated that all
the lumber witness had got on Cawen's account
was got on Cawen's individual account with
Bucknum and in part payment of Bucknum's
individual indebtedness to Cawen, and that
this arrangement was assented to by all of said
persons present, that he got the lumber last
Oct and Nov and perhaps some later but that
said \$80. worth of lumber witness so received
was charged to him the witness on Bucknum's
and Green's books that he witness could not

tell from the books of Bucknum & Green what
" he the lumber which he got at pliffs yard was
or was not included in the account of plaintiff
sued on in this cause. That the \$80 worth was
hauled across the river near the Central Rail
" road to build two houses for debt & that he
found the same kinds of lumber charged in Cam-
" ens account that was charged to him in his acc-
" ount that when he got the \$50 worth of lumber
he first spoke to Green about getting it on Cam-
" ens verbal order & that Green refused the order
that he went & saw Camen & he & Camen went &
saw Bucknum & Green that while Camen
Bucknum Green & witness were all together. That
Bucknum spoke to Green & told him that Camen con-
" ld have what Lumber he wanted, that he Bucknum
was owing him & his order for what Lumber he wanted
was as good ^{to him} as cash, that Green said it was all
right that he had a conversation with Green afterwar-
" ds & Green said Camens order would be received
that he witness could get the lumber & that he went
& got the lumber on Camens order that the \$80 was
charged to him in his account but he could not tell
whether it was in Camens account or not that he

did not find the \$50 worth in Witnesses account.

Jonathan Bulford called by debt testified that he got \$50. or \$51. dollars worth of lumber at Bucknum
" ms & Greens yard, that he told Bucknum that he wanted to get it on debts
account with him. that Bucknum said that it was all right that it would
be as good to him (Bucknum) as the money as he was owing debt.

This was all the evidence in the case and at the

request of the plaintiff the Court instructed the jury as follows.

State of Illinois }
Marshall County } ss.

In said Marshall County
Circuit Court to the October
Term 1859.

David Green surviving
Partner of firm of Bucknum
and Green

vs

Nathan Caven

Green The jury are instructed on
the part of the Plaintiff that under the plea of pay-
ment nothing can be proved by defendant but pay-
ment in money, or something accepted in payment
in lieu of money.

Green 3^d The Books of the plaintiff offered in evidence,
furnish presumptive evidence of the truth of the
charges contained in the same, against the defend-
ant, liable to be rebutted, by evidence from the
other side -

Green The jury are further instructed that Caven the defend-
ant has not the right without the consent of Green
to apply the partnership effects of Bucknum & Green
in discharge of his Bucknum's individual indebtedness.

8
up to Camen, and if the jury believe from the evidence that Camen received of Bucknum lumber that Camen knew was the lumber of Bucknum & Green in discharge of Bucknum's indebtedness to him Camen and that said lumber was so applied by Bucknum without the consent of Green his partner, then Camen is still responsible to the surviving Partner Green therefor.

The jury are further instructed that in the matters of offset or payment the burden of proof is on the defendant and that he is entitled to no more offset than he has proved himself entitled to and that before the jury can allow any offset for grain it must be proved that Bucknum & Green appropriated said grain to their own use or that the proceeds of the same came to the hands of Bucknum & Green.

The jury are further instructed that the defendant Camen is not entitled to an offset of 50 or 51 \$ for lumber in bill delivered to Telford unless it has been proved to the satisfaction of the jury that Green as a partner of Bucknum consented that Bucknum's indebtedness to Camen, to the amount of \$ 50 should be discharged in that way and that Bucknum & Green should look to Bucknum instead of Camen for the payment for said 50 dollars worth of lumber and if the jury believe this has not been proved they should not allow defendant an offset of said 50 or 51 \$.

The jury should not allow an offset of any amount for lumber delivered to Albertson unless they believe the lumber delivered to Albertson is charged to Camen in the bill attached to the Declaration in this suit.

to the giving of each of which instructions the deft. then and there

at the time of the giving the same objected and Excepted.

The jury returned into Court the following verdict.

"We the jury find the issues joined for the plaintiff and assess his damages at the sum of one hundred and fifty one dollars and thirty eight cents."
Whereupon the deft moved the Court to set aside said verdict and grant a new trial. "

David Green surviving partner &c
vs
Walter Cowen.

Marshall County
Circuit Court of the
October Term A. D. 1859

And now comes the said defendant by Richmond & Burns his attorneys and moves the Court to set aside the verdict of the jury rendered in said cause and a new trial there, in for the following reasons to wit.

- 1st Said verdict is contrary to the evidence
- 2^d Said verdict is contrary to the law
- 3^d Said verdict is contrary to the law and evidence.
- 4th The Court gave improper instructions to the jury for the plaintiff
- 5th The Court refused to give proper instructions to the jury for the defendant.
- 6th The Court refused to admit proper evidence for the defendant.
- 7th The Court admitted improper evidence for

the plaintiff.

And for other good and sufficient reasons.

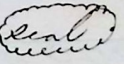
Richmond & Burns

attys for defendant

The Court overruled said motion for a new trial and rendered the following judgment upon said verdict.

"It is therefore considered by the Court that the said Plaintiff have and recover of the said Walter Camen the said sum of One hundred and fifty one dollars and thirty eight cents his damages assessed by the jury as aforesaid also his costs herein expended and that he have execution therefor."

To which decision of the Court in overruling said motion for a new trial and in rendering said judgment the defendant at time of the making said decisions Excepted and prayed that this his bill of Exceptions be signed and sealed by the Court and made a part of the record in this cause which is done in open Court

Mark Bangs 

Judge 203 Judicial District Ills "

Endorsed "Filed December 16-1859

James Wescott Clerk "

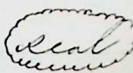
Know all men by these presents that we Walter Cawen
and Thomas Cawen are held & firmly bound unto
David Green surviving partner of Henry W. Bucknam
& David Green in the penal sum of five hundred
dollars for the payment of which well & truly to be
made we bind ourselves our heirs executors & ad-
ministrators jointly severally & firmly by these presents
Dated at Lacon this fifth day of December A.D. 1857

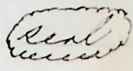
The condition of the above obligation is such
that whereas on the 22^d day of October A.D. 1857
at a term of the Circuit Court within & for the Coun-
ty of Marshall and State of Illinois then & there
holden the said David Green surviving partner
of the late firm of Henry W. Bucknam and David
Green did in a certain action of Assumpsit then
& there in said Court pending wherein said David
Green surviving partner of Bucknam & Green aforesaid
was plaintiff & said Walter Cawen was defendant
recover a judgment against said Walter Cawen
for the sum of One hundred & fifty one Dollars &
thirty eight cents damages & the costs of suit from
which judgment said Walter Cawen has taken an
appeal to the Supreme Court of said State of Illin-
ois.

Therefore if the said Walter Cawen shall well and
truly prosecute his said Appeal and pay whatever
judgment interest damages & costs may be award-
ed against him in case the said judgment of the

9

said Circuit Court shall be affirmed then this
bond shall be void otherwise remain in full force.

Walter Caven 

Thomas Caven 

Endorsed "Filed December 16. 1859

James Wescott Clerk"

State of Illinois }
Marshall County }^{ss}

I James Wescott Clerk of the
Circuit Court in and for said
County and State do certify that the foregoing is a
correct transcript of the proceedings had and the
papers on file in said Circuit Court in the suit of
David Green Survivor of Henry W. Bucknum and
David Green against Walter Caven as the same
appears of record, and on file in my office.

In Witness Whereof I hereto set my
hand and the seal of said Court
at my office in Lacon in said Coun-
ty this 26th day of March A.D. 1860

James Wescott
Clerk

Clerks fees - Transcript - 7.85

Certificate 25

8.10

By Cash of Deft 5.00

\$ 3.10

213

Walter Cowen

2,

David Green Surg.
partner of Buckner
& Green

Record

Filed April 18, 1860

L. Leland
Clerk